

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FRANK D. LACEY, JR.,

Plaintiff,

v.

Case No. 03-CV-75023-DT

DOORSTEP SHELTER, SUBSIDIARY OF MES,
INC. and JON P. RUTHERFORD,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S
"PETITION FOR LEAVE TO APPEAL"**

Pending before the court is Plaintiff's motion for certification of an interlocutory appeal, filed on February 23, 2005. In his petition, Plaintiff seeks to appeal this court's February 11, 2005 order denying Plaintiff's July 6, 2004 "Motion to Strike" [Dkt. # 47].

Before exercising discretion to grant leave for an interlocutory appeal under 28 U.S.C. § 1292(b), the Sixth Circuit requires satisfaction of three elements:

- (1) the order must involve a controlling question of law;
- (2) a substantial ground for difference of opinion must exist regarding the correctness of the decision; and
- (3) an immediate appeal must materially advance the ultimate termination of the litigation.

In re City of Memphis, 293 F.3d 345, 350 (6th Cir. 2002); see *Cardwell v. Chesapeake & Ohio Ry. Co.*, 504 F.2d 444, 446 (6th Cir. 1974).

Plaintiff has not cited case law nor set forth evidence that establishes that the court's February 23, 2005 order involves a controlling question of law, that a substantial ground for difference of opinion exists regarding the correctness of the decision, nor that

an immediate appeal would materially advance the ultimate termination of the litigation in his one-page pleading. The court notes that Plaintiff's retaliation claim remains pending before the court and the parties maintain their right to appeal any court-action in relation to this case once final judgment has been entered. See 28 U.S.C. § 1292.

Accordingly,

IT IS ORDERED that Plaintiff's "Petition for Leave to Appeal" [Dkt. # 81] is
DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 16, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 16, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522